

2025 LiveLaw (SC) 1198

**IN THE SUPRME COURT OF INDIA
CIVIL APPELLATE / INHERENT JURISDICTION
VIKRAM NATH; J., SANDEEP MEHTA; J. N.V. ANJARIA; J.
CIVIL APPEAL NO(S). 2638 of 2023
LIFE INSURANCE CORPORATION OF INDIA & ANR. *versus* VITA**

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Overriding Effect over State Rent Control Legislations - Doctrine of *Stare Decisis* - Binding Nature of Larger Bench Decisions – Held, the provisions of the PP Act 1971 prevail over State Rent Control legislations regardless of whether the premises were let out prior to or after the commencement of the Act - Clarified that once the character of a premises transforms into "public premises" within the meaning of Section 2(e) of the PP Act, the summary procedure for eviction under the Act applies to all occupants, including those inducted as tenants before the premises were acquired by the Government or a statutory corporation - Held that a Bench of lesser or co-equal strength must strictly follow the law declared by a larger Bench - Criticized the departure taken in *Suhas H. Pophale vs. Oriental Insurance Company Limited (2014)*, stating that not following the law laid down by a Constitution Bench under the "guise of clarifying" it constitutes judicial indiscipline. [Relied on *Ashoka Marketing Ltd. and Another vs. Punjab National Bank and Ors. (1990) 4 SCC 406; Paras 5-10*]

WITH C.A. Nos. 2636-2637/2023, C.A. No. 5369/2015, SLP(C) No. 28081/2012, SLP(C) No. 8296/2014, SLP(C) No. 4112/2015, SLP(C) No. 6677/2015, SLP(C) No. 24905/2015, S.L.P.(C)...CC No. 6501/2016, S.L.P.(C)...CC No. 7091/2016, S.L.P.(C)...CC No. 7050/2016, S.L.P.(C)...CC No. 7207/2016, S.L.P.(C)...CC No. 7203/2016, SLP(C) No. 15938/2016, C.A. No. 6110-6111/2017, C.A. No. 8227/2017, CONMT.PET.(C) No. 1668/2017 in C.A. No., 8227/2017, SLP(C) No. 25244-25245/2017, SLP(C) No. 23824/2018, SLP(C) No. 28119/2018, SLP(C) No. 8589/2025

For Petitioner(s)/Appellant(s): Mr. R. Venkataramani, Attorney General for India Mr. Ashok Panigrahi, Sr. Adv. Mr. R. Chandrachud, AOR Ms. Geetanjali Das Krishnan, Adv. Mr. Ankur Mittal, AOR Ms. Muskan Jain, Adv. Mr. Dinesh Mathur, Adv. Mr. Aryam Chora, Adv. Mr. Kaushik Poddar, AOR Mr. Vikas Mehta, AOR Mr. Nishant Anshul, Adv. Mr. O. P. Gaggar, AOR Mr. Sachindra Karn, Adv. Mr. Bahar U. Barqi, Adv. Mr. Aftab Ali Khan, AOR Mr. Ali Safeer Farooqui, Adv. Ms. Shreya Gulam, Adv. Mr. Rahat Ali Chaudhary, Adv. Mr. Mohd Faisal, Adv. Mr. Jayant K. Sud, Sr. Adv. Mr. M. K. Ghosh, Adv. Ms. Tina Garg, AOR Mr. Salman Khurshid, Sr. Adv. Mr. Syed Rehan, Adv. Mr. Md Shahid Anwar, Adv. Mr. Jagannath Rao, Adv. Ms. Ayesha Fatma, Adv. Mr. Md. Shahid Anwar, AOR Mr. Gaurav Goel, Adv. Mr. Rahul Gupta, AOR Mr. Arup Banerjee, AOR Mr. V.Krishnamurthy, Sr. Adv. Mr. Prashant Padmanabhan, AOR Ms. Priya Sirohi, Adv. Ms. Azka Sheikh K, Adv. Mr. Kunal Cheema, AOR Mr. Shubham Chandankhede, Adv. Mr. S. Rajappa, AOR Ms. G Dhivysri, Adv. Mr. R Gowrishankar, Adv. Mr. Pv Dinesh, Sr. Adv. Mr. Mukund P. Unny, AOR Ms. Anna Oommen, Adv. Mr. Karan Malhotra, Adv. Mr. Sanjay Nair S, Adv. Mr. Ashok Panigrahi, Sr. Adv. Ms. Swati Vaibhav, Adv. Ms. Geetanjali Das Krishnan, Adv. Mr. Suvendu Suvasis Dash, AOR

For Respondent(s): Dr. Anindita Pujari, Sr. Adv. Mr. Hitendra Nath Rath, AOR Mr. Shaileshwar Yadav, Adv. Mr. Randhir Singh Jain, AOR Mr. Nitin Mishra, AOR Ms. Mitali Gupta, Adv. Ms. Sambhavi Sharma, Adv. Mr. Hargun Singh Kalra, Adv. Mr. V. Y. Sanglikar, Adv. Mr. Satyajit A. Desai, Adv. Mr. Siddharth Gautam, Adv. Mr. Abhinav K. Mutyalwar, Adv. Mr. Sachin Singh, Adv. Mr. Ananya Thapliyal, Adv. Mr. Siddhant Singh, Adv. Ms. Anagha S. Desai, AOR Mr. Dhaval Deshpande, Adv. Mr. Amir Arsiwala, AOR Mr. C. Paramasivam, Adv. Mr. Nishant Sharma, Adv. Mr. Rakesh K. Sharma, AOR Mr. Farid F. Karachiwala, AOR Ms. Sanya Gandhi, Adv. Ms. Krutika Mehta, Adv. Mr. Vishnu Mehra, Sr. Adv. Ms. Manjeet Chawla, AOR Mr. Rahul Negi, Adv. Mr. Amitava Poddar, Adv. Mr. Ankit Yadav, AOR Ms. Gunjan Rathore, Adv. Mr. Aaditya Aniruddha Pande, AOR Mr. Siddharth Dharmadhikari, Adv. 4 Mr. Shrirang B. Varma, Adv. Mr. Bharat Bagla, Adv. Mr. Sourav Singh, Adv. Mr. Aditya Krishna, Adv. Mr. Adarsh Dubey, Adv. Ms. Chitransha Singh Sikarwar, Adv. Mr. Vishnu Mehra, Sr. Adv. Mr. Mr Vishnu Mehra, Sr. Adv. Mr. Rahul Negi, Adv. Ms. S. Ramamani, AOR Mr. Aakarsh Kamra, AOR Mr. Viren Ashar, Adv. Mr. Aditya Sharma, Adv. M/S. Parekh & Co., AOR Mr. Manjit Singh Gill, Adv. Mr. Ajay Pal Singh, Adv. Mr. Amit Kumar Chawla, Adv. Ms. Swati

Vishan, Adv. Mr./Ms. Mahi Pal Singh, Adv. Mr. Ravinder Pal Singh, Adv. Mr. Shree Pal Singh, AOR Mr. Gaurav Goel, AOR Mrs. Aparna Rohtagi Jain, Adv. Mr. Rajesh Kumar, Adv. Mr. Jns Tyagi, Adv.

J U D G M E N T

N.V. ANJARIA, J.

In view of two conflicting judgments on the aspect of overriding applicability of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971¹ as against State Rent Control Legislations, a two-Judge Bench of this Court passed order dated 17.03.2015 in Special Leave to Appeal (Civil) No.35859 of 2014, [now Civil Appeal No.2638 of 2023] along with other Special Leave Petitions (Civil) Nos.6677 of 2015 and 4112 of 2015, referring the matters for adjudication by a threeJudge Bench.

1.1 The referral order dated 17.03.2015, aforementioned, reads as under,

“In these petitions, in fact, the ratio decided by the two-Judge Bench of this Court in the case of **Suhas H. Pophale vs. Oriental Insurance Company Limited and its Estate Officer**², is contrary to the decision of the Constitution Bench rendered in the case of **Ashoka Marketing Ltd. And Another vs. Punjab National Bank and Ors.**³. Therefore, these matters need to be heard by a three-Judge Bench.”

1.2 It is accordingly that the present batch of cases came to be posted before this Court, which await answer to the issue referred to.

Issue Under Reference

2. The principal question that arises for determination in this batch of matters is whether the provisions of the PP Act 1971 would prevail over the respective State Rent Control legislations, in relation to premises let out prior to the commencement of the said Act, as against the premises let out after its enforcement but before their acquisition or transfer to the Government or any statutory corporation, by which the character of such premises stood transformed into “public premises” within the meaning of the Act.

2.1 In other words, the issue that falls for determination is whether, for the purposes of application of the PP Act 1971, a valid distinction can be made between tenants who were in occupation of the premises prior to the enforcement of the said Act and those who entered into occupation subsequent thereto but before such premises were taken over by the Government or a Government Corporation, as the case may be; and whether in such cases, the operation of the PP Act 1971 is intended to be only prospective in nature.

Representative Facts

3. As the Civil Appeal No.2638 of 2023 titled as “**Life Insurance Corporation of India Limited vs. Vita Pvt. Ltd. & Anr.**” has been treated to be the lead matter, the basic facts involved therein may be highlighted as representative. In all other cases the facts are more or less similar. The Special Leave Petition/Civil Appeal arises from the judgment and order of the High Court of Bombay dated 20.06.2014 in Writ Petition (C) No.2628 of 2013 whereby the High Court quashed the order of the City Civil Court which had declared the order of eviction passed by the Estate Officer under the PP Act 1971 to be illegal, resting on the reasoning that the controversy was covered by the judgment of this Court in **Suhas H. Pophale**².

¹ PP Act 1971

² 2014 (4) SCC 657

³ 1990 (4) SCC 406

3.1 The Life Insurance Corporation of India Limited—appellant herein, which is a statutory Corporation established under the provisions of the Life Insurance Corporation Act, 1956 an entity wholly owned by the Central Government, owns and maintains, amongst other immovable properties, the premises described as Flat No. G-B, Ground Floor, Jeevan Jyot Building, 7 Setalwad Road, Mumbai-400 006, and identified with Tenancy Code 2445. The tenancy in respect of this property was created in favour of respondent No.1-VitaPrivate Limited in or around April, 1957.

3.1.1 The PP Act, 1971 came into force on 23.08.1971. This Central Legislation was given effect retrospectively from 16.09.1958, by virtue of Section 1(3) of the Act. It appears that Respondent No.1 addressed a letter dated 31.08.2007 asking the appellant to send the bills and receipts at the address as suggested in the letter. The Building Inspector gave report dated 28.07.2008 that the premises in question was locked for over a period of one year and that the same was occupied by one Smt. B.J. Malhoutra-respondent No.2 herein who used to visit the premises occasionally. It was the case of the appellant that respondent No.2 was a trespasser, and her occupation of the premises was illegal.

3.1.2 Thereupon, a notice dated 24.03.2009 under Section 108 of the Transfer of Property Act, 1882 for terminating the tenancy was sent by the appellant to the respondents, asking the tenant to vacate and handover the possession of the premises, to pay the arrears of rent, as also compensation etc. in order to avoid initiation of proceedings for unauthorised occupancy of the premises under the PP Act 1971. As the notice did not yield any result, the appellant-Corporation made an application dated 08.09.2009 under Sections 5 and 7 of the PP Act 1971 before the Estate Officer appointed under Section 3 of the Act, seeking eviction of the respondents and any other persons found to be in unauthorised occupation of the public premises.

Contentions before the Estate Officer

3.2 One of the contention of the respondents before the Estate Officer was that the respondent no.1-Company was inducted in the premises as tenant in the year 1957 and that in view of Section 33 of the Maharashtra Rent Control Act, 1999⁴, only the Small Causes Court had jurisdiction in the subject matter, although it appeared that the said contention was not seriously pressed. It was also the contention that it was illegal on the part of the Estate Officer to issue show cause notice in relation to arrears and damages.

3.2.1 The appellant Corporation asserted that respondents were the unauthorised occupants with effect from 01.05.2009 as the monthly tenancy of respondent No.1 was terminated by notice dated 24.06.2009, and that respondent No.2 was a trespasser in occupation unauthorisedly. Holding that the premises was governed by the PP Act 1971, the Estate Officer by order dated 27.03.2012, directed eviction of the respondents and further mandated for payment of rent and the damages with interest. The appeal preferred by the respondents before the City Civil Court, Mumbai came to be dismissed on 29.01.2013.

The aforesaid order of the City Civil Court, Mumbai was subjected to challenge before High Court by way of Writ Petition (C) No.2628 of 2013. The said writ petition came to be allowed vide order dated 20th June, 2014, which is assailed in this appeal by special leave.

⁴ 1999 Rent Control Act

Reasoning of the High Court

3.3 The reasons supplied by the High Court while allowing the Writ Petition and setting aside the judgment and order of the City Civil Court may be looked at in their necessary details inasmuch as they directly reflect on the issue to be addressed in this reference.

3.3.1 The High Court relied upon the decision of this Court in **Suhas H. Pophale**², and addressed the question whether the rights of an occupant/ licensee/ tenant protected under the State Rent Control Act, namely the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947⁵ and its successor Maharashtra Rent Control Act, 1999 which was applicable in the instant case, would be superseded because of the application of the PP Act 1971.

3.3.2 The High Court stated that the principle contention raised by the appellant was that his occupation of the premises concerned was protected by the 1947 Rent Control Act with effect from 1st February, 1973, which was even prior to the respondent in that case acquiring title over the property from 1st January, 1974 and therefore, by invoking provisions of the PP Act 1971, he could not have been evicted treating him to be an unauthorised occupant.

3.3.3 The High Court followed the view in **Suhas H. Pophale**² and held that the Public Premises could not have been given retrospective effect to take away the benefits to the petitioner-tenant under the 1947 Rent Control Act and the rights made available under the State enactment. The tenant could not be evicted by giving retrospective application to the provisions of the PP Act 1971 stated the High Court.

3.3.4 The High Court proceeded with the reasoning, as extracted below,

“The Public Premises Act, 1971 came into force on 23rd August, 1971. But Section 1(3) thereof states that it shall be deemed to have come into force on 16th September, 1958 except for Section 11 (on offences and penalty) and Sections 19 and 20 (on repeal and validation). The respondent Corporation came into existence on its creation under Life Insurance Corporation Act of 1956. It became entitled to resort to the provisions of Public Premises Act, 1971 only on 16th September, 1958. Therefore, any tenancies created prior to that date being protected by the State Rent Legislation remained beyond the application of Public Premises Act, 1971.”

Guided By Suhas H. Pophale

3.3.5 The High Court concluded that any tenancy created, prior to the date of coming into force of the PP Act 1971 that is, 16.09.1958 would stand protected under the State Rent legislation and shall remain beyond the application of the PP Act 1971 and that the landlord-Life Insurance Corporation was required to file eviction proceedings in the Court of Small Causes at Bombay. This view was based on what **Suhas H. Pophale**² had held.

3.3.6 The two-Judge Bench carved out two categories of the persons in occupation of a premise which became public premises, for the purpose of applying to them the provisions of the PP Act 1971. The conclusions it summarised were as under,

(i) For any premises to become public premises, the relevant date will be 16-9-1958 or whichever is the later date on which the premises concerned become the public premises as belonging to or taken on lease by LIC or the nationalised banks or the general insurance companies concerned like Respondent i.e. The Oriental Insurance Co. Ltd.; and that

⁵ 1947 Rent Control Act

- (ii) All those persons falling within the definition of a tenant occupying the premises prior thereto will not come under the ambit of the PP Act 1971 and cannot therefore, be said to be persons in 'unauthorised occupation'.
- (iii) there are two categories of occupants of these public corporations who get excluded from the coverage of the PP Act itself.
 - (a) Firstly, those who are in occupation since prior to 16.09.1958, that is, prior to the Act becoming applicable and thus, they are clearly outside the coverage of the Public Premises Act.
 - (b) Secondly, those who come in occupation thereafter but prior to the date of the premises concerned coming under the ownership/control of a government corporation or a company and are covered under a protective provision of the State Rent Act also gets excluded and until such date, 1947 Rent Control Act and its successor 1999 Rent Control Act will continue to govern the relationship between the occupants of such premises on the one hand, and such government companies and corporations on the other.
- (iv) Hence, with respect to such occupants it would not be open to such companies or corporations to issue notices, and to proceed against such occupants under the PP Act 1971 and such proceedings will be void and illegal.

Rival Submissions

4. Heard learned Attorney General for India Mr. R. Venkataramani with learned senior advocate Shri Ashok Panigrahi, other senior advocates and respective assisting learned advocates in the lead appeal as well as other appeals for the appellants, learned senior advocate Dr. Anindita Pujari, learned senior advocate, Mr. Vishnu Mehra assisted by other respective learned advocates for the respondents, at length.

4.1 Learned senior counsels and assisting learned advocate led by learned Attorney General, on behalf of the appellant-Life Insurance Company and the other Insurance Companies, as the case may be, the owners of the premises, raised following main submissions,

- (a) There exists an *ex-facie* inconsistency between the Constitution Bench judgment in **Ashoka Marketing**³ and in two Judges Bench decision in **Suhas H. Pophale**².
- (b) The distinction created by **Suhas H. Pophale**² between the tenants in occupation of the Public Premises prior to coming into force of the PP Act 1971 and those in occupation post-coming into force of the Act is in clear conflict with the ratio of the five Judges Bench decision in **Ashoka Marketing**³. The distinction so carved out is totally artificial in nature and in essence, such distinction does not exist.
- (c) It was erroneous on the part of **Suhas H. Pophale**² to make the applicability of the PP Act 1971 to be dependent on the date of the entry of the tenant into the said premises.
- (d) As held in **Ashoka Marketing**³, the PP Act 1971 would have an overriding effect over the Rent Control Act. The provisions of the PP Act 1971 have to be applied even to such premises which were within the bounds of the Rent Control Act and no exception could be created on the basis of the date of coming into force of the PP Act 1971.
- (e) **Suhas H. Pophale**² drew inferences from **Ashoka Marketing**³ in its own way which were unfounded and not in consonance with the ratio of **Ashoka Marketing**³. The High Court of Bombay seriously erred in relying on **Suhas H. Pophale**².

4.2 On the other hand learned senior counsels with learned advocate assisting them for the respondents-tenants in respective matters argued on the following lines,

(i) It was incorrect on part of the High Court to hold that the provisions of the PP Act 1971 would apply merely for the reasons that the 1999 Rent Control Act is not applicable inasmuch as the petitioner-tenant is excluded under Section 3(1)(b) of the 1999 Rent Control Act.

(ii) In holding as above, the High Court disregarded the following aspects:

(a) In a situation where neither the PP Act 1971 is applicable nor the Maharashtra Rent Control Act, 1999 is applicable, then in such a situation the dispute between the parties had to be adjudicated under Section 41 of The Presidency Small Cause Courts Act, 1882, as applicable to State of Maharashtra.

(b) As per Section 41 the Court of Small Causes shall have jurisdiction to entertain and try eviction proceedings with respect to immovable property situated in Greater Bombay or with respect to its Rent, irrespective of the value of subject matter of such suits or proceedings.

(c) The tenancy/Lease between the parties would be governed by Section 106 of Transfer of Property Act, 1882 in as much as after expiry of the Lease Agreement, the Petitioner has been continuing as tenant/Lessee in the premises in question and has been regularly paying rent to the appellant insurance company since 1965.

(d) Respondent cannot be termed as unauthorized occupant as it was inducted as tenant and had paid the rent regularly.

(e) The Corporation duly accepted the amount of rent without protest. The law laid down in **Suhas H. Pophale**² is correct in the context of the facts of the case.

(iii) Reliance was placed on Section 15A of the 1947 Rent Control Act to contend that the PP Act 1971 cannot be applied to the subject premises and tenancy of the respondents.

Framework of Public Premises Act, 1971

5. Before we proceed to delve into and consider the issue at hand, noticing the relevant provisions of the PP Act 1971 by way of preface would be useful.

5.1 The definition of 'Public Premises' is provided under Section 2(e) of the Act. Sub clause (ii) of sub-section (1) includes any premises belonging to, or taken on lease, by or on behalf for Corporation such as LIC. For ready reference, Section 2 (e) of PP Act 1971 is reproduced herein below: -

'2(e) **'public premises'** means—

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by the Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980, under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of,—

(i) any company as defined in Section 3 of the Companies Act, 2013 (18 of 2013), in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company,

(ii) any Corporation not being a company as defined in Section 3 of the Companies Act, 2013 (18 of 2013), or a local authority established by or under a Central Act and owned or controlled by the Central Government,

(iii) any company as defined in clause (20) of Section 2 of the Companies Act, 2013 (18 of 2013) in which not less than fifty-one per cent of the paid-up capital is held partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary (within the meaning of that Act) of the first mentioned company and which carries on the business of public transport including metro railway.

Explanation.—For the purposes of this item, “metro railway” shall have the same meaning as assigned to it in clause (i) of subsection (1) of Section 2 of the Metro Railway (Operation and Maintenance) Act, 2002 (60 of 2002);

(iii-a) any University established or incorporated by any Central Act,

(iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961),

(v) any Board of Trustees or any successor company constituted under or referred to in the Major Port Trusts Act, 1963 (38 of 1963);

(vi) the Bhakra Management Board constituted under Section 79 of the Punjab Reorganisation Act, 1966 (31 of 1966), and that Board as and when renamed as the BhakraBeas Management Board under sub-section (6) of Section 80 of that Act;

(vii) any State Government or the Government of any Union Territory situated in the National Capital Territory of Delhi or in any other Union Territory;

(viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924); and (3) in relation to the [National Capital Territory of Delhi,—

(i) any premises belonging to the Council as defined in clause (9) of Section 2 of the New Delhi Municipal Council Act, 1994 (44 of 1994) or Corporation or Corporations notified under sub-section (1) of Section 3 of the Delhi Municipal Corporation Act, 1957 (66 of 1957) of Delhi, or any municipal committee or notified area committee,

(ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority, and

(iii) any premises belonging to, or taken on lease or requisitioned by, or on behalf of any State Government or the Government of any Union Territory;

(iv) any premises belonging to, or taken on lease by, or on behalf of any Government company as defined in clause (45) of Section 2 of the Companies Act, 2013 (18 of 2013).

Explanation.— For the purposes of this clause, the expression, “State Government” occurring in clause (45) of the said section shall mean the Government of the National Capital Territory of Delhi.

(4) any premises of the enemy property as defined in clause (c) of Section 2 of the Enemy Property Act, 1968 (34 of 1968).”

5.1.1 Section 2(g) defines “unauthorised occupation” as under:

“2(g) “unauthorised occupation, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.”

5.1.2 Sections 4 and 5 of the Act outline the procedure of eviction under the Act. The provision of Section 4 stipulates that if the Estate Officer has information or has reason to

believe that any person is in unauthorised occupation of any public premises and that he should be evicted, the Estate Officer shall issue a notice in writing specifying the grounds calling upon the person concerned to show cause why an order of eviction should not be made. It is further provided that any delay in issuing a notice shall not vitiate the proceedings under this Act. In response to the notice, the occupant(s) shall be required to appear before the Estate Officer on the date specified along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.

5.1.3 Section 5 deals with the eviction of unauthorised occupants. It provides *inter alia* that after considering the cause shown by any person in pursuance of a notice issued under Section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under sub-clause (ii) of clause (b) of sub-section (2) of Section 4, the Estate Officer is satisfied that the public premises are in unauthorised occupation, the Estate Officer shall make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, but not later than fifteen days from the date of the order, by the person/s who may be in occupation thereof or any part thereof.

5.1.4 It is further provided that if any person refuses or fails to comply with the order of eviction on or before the date specified in the said order, the Estate Officer or any other officer duly authorised by the Estate Officer is entitled to take possession of the public premises and for that purpose, the said officer may use force as may be necessary. The Estate Officer has power to grant time to vacate if any compelling reason exists.

5.1.5 The PP Act 1971 thus envisages special procedure for eviction of unauthorised occupant/s of the public premises. The special procedure seeks to facilitate speedy recovery of the possession of 'public premises' avoiding technicalities and possibility of delay.

5.1.6 The Constitutionality of the PP Act 1971 and the summary procedure for eviction provided thereunder came to be upheld by a five-Judge Bench of this Court in **Kaiser-i-Hind Pvt. Ltd. & Anr. vs. National Textile Corpn. (Maharashtra North) Ltd. & Ors.**⁶
Suhas H. Pophale Versus Ashoka Marketing

(a) Facts in Suhas H. Pophale

5.2 In the process of analysing as to how **Suhas H. Pophale**² stands in contradiction to **Ashoka Marketing**³, the facts involved and the issue addressed in **Suhas H. Pophale**² may be noticed. The premises identified as Flat No. 3 in Colaba, Mumbai belonged to the Indian Mercantile Insurance Company, which subsequently merged with the respondent Oriental Insurance Company Limited - a government company. One Mr. Voller was a tenant of the erstwhile Indian Mercantile Insurance Company i.e., the predecessor-in-title of the Oriental Insurance Company Limited. Subsequently, Mr. Voller executed a leave and licence agreement dated 20.12.1972 in favour of the appellant for two years, and put him in exclusive possession of the premises. Mr. Voller, migrated to Canada. The appellant, a practising physician remained in exclusive possession, and was accepted as tenant by the Oriental Insurance Company Limited.

5.2.1 The landlord - Oriental Insurance Company Limited addressed a notice dated 12.7.1980 to Mr E. Voller terminating his tenancy with respect to the said premises, and also instituted a suit for eviction against him as well as against the appellant Suhas H.

⁶ (2002) 8 SCC 182

Pophale in the Court of Small Causes at Mumbai, under the provisions of the 1947 Rent Control Act. The appellant requested the Oriental Insurance Company Limited to regularise his tenancy as a statutory tenant. The Insurance Company served on the appellant notices under Sections 4 and 7 of the PP Act 1971 to show cause as to why he should not be evicted.

5.2.2 Ultimately, the eviction order dated 28.05.1993 was passed directing the eviction of said Mr. Voller as well as the appellant from the premises. The appellant's appeal before the City Civil Court filed under Section 9 of the PP Act 1971 was dismissed and the eviction order was upheld. The High Court also dismissed the writ petition.

5.2.3 The principal contention raised by the appellant-tenant before the High Court was that the occupation of the premises in question was protected under Section 15-A of the 1947 Rent Control Act with effect from 01.02.1973, that is, prior to the respondent-Insurance Company acquiring the title over the property on 01.01.1974 from the erstwhile Indian Mercantile Insurance Company. It was the contention of the appellant that in view of the protection of the said provision, he could not have been evicted by invoking the provisions of the PP Act 1971, and by treating him as an unauthorised occupant under that Act.

(b) View in Suhas H. Pophale

5.3 The two-Judge Bench of this Court in **Suhas H. Pophale**² proceeded to lay down that the PP Act 1971 had only prospective effect. It was held that the PP Act 1971 would apply to those premises which (a) were public premises on 16.09.1958 or (b) become public premises after 16.09.1958 i.e., from the date of vesting of the premises in any government/public entity mentioned in Section 2(e) of the said Act or from the date when the owner/lesser of the premises becomes a government/public entity under Section 2(e) of the said Act.

5.3.1 The aforesaid date 16.09.1958 described as 'date 1' and post 16.09.1958 described as 'date 2' were the effective dates. It was also, when the PP Act 1971 would have overriding effect over the State Rent Act. In the process, the Court also considered the concept as to when premise could be said to be owned/controlled by a government/ public entity.

5.3.2 The Court adverted to the definition of 'unauthorised occupation' contained in Section 2(g) of the PP Act 1971. According to **Suhas H. Pophale**², the aforesaid definition was to be read in two parts. The first part dealt with the persons who are in occupation of the public premises "without authority for such occupation" and the second part dealt with those in occupation of the public premises, whose authority to occupy the premises "had expired or had been determined for any reason whatsoever". Taking such context, the Court ruled that the PP Act 1971 would not apply to persons who entered in the occupation prior to the 'date 1' and 'date 2' mentioned above, as the case may be, who, (according to the two-Judge Bench), had acquired the vested right of the occupation. The prospectivity and application of the PP Act 1971 was accordingly underlined.

5.3.3 In other words, separate categories were carved out by the Court, stating that the premises of LIC would become public premises within the meaning of the PP Act 1971 from the date of coming into force of the Life Insurance Corporation Act, 1956, similarly, for banking companies the relevant date would be the date of their nationalization which took place under the provisions of the Banking Companies Act, 1970. The Court held that the third class namely all other persons falling within the definition of tenant occupying the

premises would not come under the umbrella of the PP Act 1971 and they would not be classified as persons in 'unauthorised occupation'.

5.3.4 It was, thus, reasoned that the premises could be said to be belonging to the government only when the aforesaid Acts namely the Life Insurance Corporation Act, 1956 and the Banking Companies Act, 1970 came into force. It was held that the occupants of such premises were the tenants of the erstwhile Insurance Company which were the private landlords and that status as occupants of the public insurance companies had been thrust upon later, by applying the PP Act 1971 to evict them.

(c) Facts In Ashoka Marketing Ltd.

5.4 The issue of overriding effect of the PP Act 1971, *vis-à-vis* State Rent Control Act was dealt with by the five-Judge Bench of this court as back as in the year 1990 in **Ashoka Marketing**³ in the context of set of facts akin and similar to **Suhas H. Pophale**². The Constitution bench in **Ashoka Marketing**³ dealt with the tenancies prior to the coming into force of the PP Act 1971. In first case involved in **Ashoka Marketing**³, the building originally belonged to the Punjab National Bank-a banking corporation. **Ashoka Marketing**³ and Sahu Jain Service Ltd. were the tenants in the premises since 10.07.1958. As a result of the enactment of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the undertaking of the Punjab National Bank Ltd. came to be transferred and stood vested in the Punjab National Bank, which became a body corporate constituted under the 1970 Act. The tenants of the Punjab National Bank Ltd. became the tenants of the Punjab National Bank. The tenancy of both the tenants came to be terminated with effect from 30.11.1971 by issuance of notices dated 18.05.1971 under Section 106 of the Transfer of Property Act, 1882.

5.4.1 In another case, the tenant was inducted since 1948 by the then Insurance Company. The life insurance business was nationalized under the Life Insurance Corporation Act, 1956, whereby the Life Insurance Corporation was established. The tenant became a tenant of the Life Insurance Corporation. The Life Insurance Corporation proceeded to determine the tenancy by giving notice under Section 106 of the Transfer of Property Act, 1882. Eviction proceedings were successfully initiated under the PP Act 1971 against the tenant **Ashoka Marketing**³.

5.4.2 The Constitution Bench in **Ashoka Marketing (supra)** addressed this question:- "whether a person who was inducted as a tenant in premises, which are public premises for the purpose of the PP Act 1971, and whose tenancy has expired or has been terminated, can be evicted from the said premises as being a person in unauthorised occupation of the premises under the provisions of the PP Act 1971 and whether such a person can invoke the protection of the Delhi Rent Control Act, 1958". In other words, the issue before the Court was whether the provisions of the PP Act 1971 would override the provisions of the State Rent Control Act in respect of the premises which come within the purview of both the enactments.

Interpretation In Ashoka Marketing Ltd.

5.5 In dealing with the above issue, the fiveJudge Bench of this Court observed that the Rent Control legislations fall within the ambit of Entries 6, 7 and 13 of List III of the Seventh Schedule to the Constitution. The Rent Control Act has been enacted by Parliament in exercise of its legislative power under Article 246(4) of the Constitution. On the other hand, PP Act 1971 which deal with the eviction of unauthorised occupants from the premises belonging to or taken on lease or requisitioned by or on behalf of the Central Government would fall within Entry 32 of List I being law with respect to a property of the Union. At the

same time, it was stated that in relation to the properties belonging to the various legal entities mentioned in clauses (2) and (3) of Section 2(e) of the PP Act 1971 would stand covered by Entries 6, 7 and 46 of List III.

5.5.1 Thus, both the statutes namely, the Rent Control Act and the PP Act 1971 were enacted by the same legislature in exercise of the legislative powers in respect of the matters enumerated in the Concurrent List and the Union List respectively. The Court stated that in its opinion, the question whether the provisions of the PP Act 1971 override the provisions of the Rent Control Act had to be considered in light of the principles of statutory interpretation applicable to the laws made by same legislature.

5.5.2 The Court proceeded to highlight such principle of statutory interpretation observing, “One such principle of statutory interpretation which is applied is contained in the latin maxim : *leges posteriores priores contrarias abrogant* (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim: *generalia specialibus non derogant* (a general provision does not derogate from a special one.) This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Bennion, *Statutory Interpretation* pp. 433-34).” (Para 50)

Domain of Two Statutes

5.6 It was observed that the Delhi Rent Control Act is an earlier enactment, whereas the PP Act 1971 is subsequently enacted law and thus, it being the enactment later in point of time, represents the last will of the Parliament. The Court observed that the PP Act 1971 should, therefore, prevail over the Delhi Rent Control Act unless it can be said that the PP Act 1971 is a general enactment, whereas the Rent Control Act is a special enactment.

5.6.1 Explaining the operational status of the Rent Control legislation and the PP Act 1971, it was observed,

“The Rent Control Act makes a departure from the general law regulating the relationship of landlord and tenant contained in the Transfer of Property Act inasmuch as it makes provision for determination of standard rent, it specifies the grounds on which a landlord can seek the eviction of a tenant, it prescribes the forum for adjudication of disputes between landlords and tenants and the procedure which has to be followed in such proceedings. The Rent Control Act can, therefore, be said to be a special statute regulating the relationship of landlord and tenant in the Union territory of Delhi.” (para 55)

5.6.2 The PP Act 1971 intends for speedy eviction, stated the Constitution Bench,

“The Public Premises Act, 1971 makes provision for a speedy machinery to secure eviction of unauthorised occupants from public premises. As opposed to the general law which provides for filing of a regular suit for recovery of possession of property in a competent court and for trial of such a suit in accordance with the procedure laid down in the Code of Civil Procedure, the Public Premises Act, 1971 confers the power to pass an order of eviction of an unauthorised occupant in a public premises on a designated officer and prescribes the procedure to be followed by the said officer before passing such an order.” (para 55)

5.6.3 It was thus clearly expressed that the PP Act 1971 is a special statute and that it will override the Rent Control Act

“Therefore, the Public Premises Act, 1971 is also a special statute relating to eviction of unauthorised occupants from public premises. In other words, both the enactments, namely, the Rent Control Act and the Public Premises Act, 1971, are special statutes in relation to the matters dealt with therein. Since, the Public Premises Act, 1971 is a special statute and not a general

enactment the exception contained in the principle that a subsequent general law cannot derogate from an earlier special law cannot be invoked and in accordance with the principle that the later laws abrogate earlier contrary laws, the Public Premises Act, 1971 must prevail over the Rent Control Act.” (Para 55)

Policy And Purpose Would Prevail

5.7 As both the enactments are ‘special enactments’ in their respective realms, the five Judge Bench observed on the basis of the principle stated in **Shri Ram Narain vs. Simla Banking and Industrial Co., Limited**⁷ that when each enactment is a special Act, the ordinary principle that a special law overrides a general law does not afford any clear solution. In such circumstances, it was stated, it would be desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given scenario, on much broader considerations of the purpose and policy underlying the two statutes and the clear intendment conveyed by the language of the relevant provisions therein.

5.7.1 After referring to several other decisions, the proposition was stated thus,

“The principle which emerges from these decisions is that in the case of inconsistency between the provisions of two enactments, both of which can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein.” (Para 61)

5.7.2 It was stated that the consequence of giving overriding effect to the provisions of the PP Act 1971 over the Rent Control Act would be that the buildings belonging to companies, corporations and autonomous bodies referred to in Section 2(e) of the PP Act 1971 would be excluded from the ambit of the Rent Control Act in the same manner as properties belonging to the Central Government. It was further stated that the Government while dealing with the citizens in respect of property belonging to it would not act for its own purpose as a private landlord but would act in public interest.

Legislative Intent Recognised

5.8 **Ashoka Marketing**³ considered the object and purpose of the PP Act 1971 and the overall legislative intendment behind the enactment. It was held that the object and purpose of the PP Act 1971 would give it an overriding effect over the provisions of the Rent Control Act, even though, the relevant sections of both the PP Act 1971 and Delhi Rent Control Act contained a *non-obstante* clause. The Court provided that the scope of the provisions of the Public Premises Act cannot be whittled down on the basis of the apprehension that the Corporations like nationalised banks or the Life Insurance Corporation are trading Corporations interested in earning profit. They cannot be precluded from buying the properties in possession of the tenants at low price and then vacating the tenants after terminating the tenancy and thereafter selling the property at higher price.

5.8.1 Negating the contention that the provisions of the PP Act 1971 if given overriding effect would be exploited by such corporations to expand the business with a view to earn profit, it was observed,

“The consequence of giving overriding effect to the provisions of the Public Premises Act, 1971 is that premises belonging to companies and statutory bodies referred to in clauses (2) and (3) of Section 2(e) of the Public Premises Act, 1971 would be exempted from the provisions of the Rent Control Act. The actions of the companies and statutory bodies mentioned in clauses (2) and (3)

⁷ AIR 1956 SC 614

of Section 2(e) of the Public Premises Act, 1971 while dealing with their properties under the Public Premises Act, 1971 will, therefore, have to be judged by the same standard". (Para 69)

5.8.2 The Constitution Bench with above interpretational philosophy and cogent reasons stated further,

"we are unable to accept the contention of the learned counsel for the petitioners that the provisions contained in the Public Premises Act, 1971 cannot be applied to premises which fall within the ambit of the Rent Control Act. In our opinion, the provisions of the Public Premises Act, 1971, to the extent they cover premises falling within the ambit of the Rent Control Act, override the provisions of the Rent Control Act and a person in unauthorised occupation of public premises under Section 2(e) of the Act cannot invoke the protection of the Rent Control Act." (Para 70)

Law Settled Even Prior to Ashoka Marketing

5.9 Even before the decision in **Ashoka Marketing**², a three-Judge bench of this Court in **M/s. Jain Ink Manufacturing Company vs. Life Insurance Corporation of India & Anr.**⁸ had an occasion to deal with an identical issue interpreting Section 2(g) and Section 5 of the PP Act 1971. The Court held that the factum of occupation at the material time is sufficient for the purpose of eviction under Section 5 of the PP Act 1971.

5.9.1 In **M/s. Jain Ink**⁷, the LIC purchased the premises in which the appellant was the tenant who was inducted by the original owner of the premises. The LIC issued notice to the appellanttenant under Section 106 of the Transfer of Property Act, 1882 asking the appellant to vacate the premises, but the appellant failed to do so, which led the LIC to file an application with the Estate Officer under the PP Act 1971. The contention was that the appellant could not be treated to be an unauthorised occupant since he had entered into possession of the premises long before the premises were purchased by the LIC, i.e., the subsequent owner.

5.9.2 This Court explained and interpreted the concept of 'unauthorised occupant' under Section 2(g) of the PP Act 1971, to conclude that Section 2(g) is an inclusive definition which consists of two separate limbs. First, is where a person is in occupation in relation to any public premises without authority for such occupation, and second, when the possession or occupation of the tenant continues after the lease is determined.

5.9.3 It was pointedly observed that the definition of 'unauthorised occupation' of the public premises does not use the word "possession" or the words "entry into possession" at any point of time at all. What is contemplated, observed the Court, in the said Section is the occupation of any public premises. It was stated that the entry into possession connotes one single terminus, when a person enters into possession or occupies the property whereas occupation is a continuous process which starts right from the point of time when the person enters into possession or occupies the premises and continues until he leaves the premises.

5.9.4 The Court was unequivocal in stating that 'what is germane for the purpose of interpretation of Section 2(g) is whether or not the person concerned was in occupation of the public premises when the PP Act 1971 was passed'. It was recorded in **M/s. Jain Ink**⁷, that the appellant continued to occupy the property even after the PP Act 1971 came into force and in fact accepted the LIC as his landlord. Since the lease was determined by the LIC by issuing a notice under Section 106 of the Transfer of Property Act, the appellant-tenant fell 'within the ambit of definition of Section 2(g) of the PP Act 1971 to become an

⁸ (1980) 4 SCC 435

‘unauthorised occupant’ liable to be evicted in accordance with the procedure envisaged, and was not entitled to claim the applicability and protection of the Rent Control Act.

5.9.5 It was held in **M/s. Jain Ink**⁷,

(a) The mere fact that by virtue of a fiction the Public Premises Act, 1971 was given retrospective effect from 1958 will not alter the date when the Public Premises Act, 1971 was actually passed, that is to say August 23, 1971.

(b) In these circumstances, the Public Premises Act, 1971 being subsequent to the Rent Control Act would naturally prevail over and override the provisions of the Rent Control Act.

(c) Although in both the Public Premises Act, 1971 and the Delhi Rent Control Act there are *non obstante* clauses but the question to be determined is whether the *non obstante* clauses operate in the same field or have two different spheres though there may be some amount of overlapping. In such cases the conflict should be resolved by reference to the object and purposes of the laws in consideration.

Ashoka Wholly Misread

6. In rendering the decision, the two-Judge Bench in **Suhas H. Pophale**² contradicted and disregarded what was laid down in the earlier decisions of the Bench of larger strength. **Suhas H. Pophale**² adverted to split-reading of definition in Section 2(g). Reading the same disjunctively, a view was taken that the first part of the definition deals with the persons who are in occupation of the ‘Public Premises’ ‘without authority of such occupation’ and the second part deals with those in occupation of the ‘Public Premises’ whose authority to occupy the premises ‘has expired or has been determined for any reason whatsoever’.

6.1 Taking such context, **Suhas H. Pophale**² ruled that the PP Act 1971 would not apply to persons who entered into occupation prior to the ‘date 1’ and ‘date 2’ mentioned above, as the case may be, and that such persons had acquired the vested right of occupation. In other words, **Suhas H. Pophale**² underscored that the PP Act 1971 has only prospective application. This was completely in conflict with the ratio laid down in **Ashoka Marketing**³.

6.2 According to **Suhas H. Pophale**², the eviction of unauthorised occupants under the PP Act 1971 would come into play from 16.09.1958, or from the later date when the premises concerned became ‘Public Premises’ by virtue of the same vesting into a Government company or a Corporation like LIC or the Nationalized Banks or the General Insurance Company. According to the decision, the occupants-tenants of categories who were in occupation prior to 16.09.1958, that is, before coming into force of the PP Act 1971, would be beyond the purview of the Act.

6.3 It was further observed in para 64 that in respect of such occupants, it would not be open for the Government bodies, Corporations or Companies to proceed against them under the PP Act 1971 and that any such proceedings initiated would be void and illegal. Further view was taken that this class of occupants can seek declaration of the status and for their other rights such as transmission of the tenancies to the legal heirs etc, under the 1947 Rent Control Act or its successor 1999 Rent Control Act to seek the protective relief in the nature of injunction, etc. and that the forums provided under the State Rent Control Act will alone have the jurisdiction to entertain such proceedings.

Contrary Propositions

7. The following propositions set out in **Suhas H. Pophale**² are contrary to and in direct conflict with what was laid down earlier by the Benches of larger strength,

“For any premises to become public premises, the relevant date will be 16-9-1958 or whichever is the later date on which the premises concerned become the public premises as belonging to or taken on lease by LIC or the nationalised banks or the general insurance companies concerned like the first respondent. All those persons falling within the definition of a tenant occupying the premises prior thereto will not come under the ambit of the Public Premises Act, 1971 and cannot therefore, be said to be persons in “unauthorised occupation”. (para 59)

7.1 The error was further exacerbated by the following observation,

“Whatever rights such prior tenants, members of their families or heirs of such tenants or deemed tenants or all of those who fall within the definition of a tenant under the Bombay Rent Act have, are continued under the Maharashtra Rent Control Act, 1999. If possession of their premises is required, that will have to be resorted to by taking steps under the Bombay Rent Control Act, 1947 or the Maharashtra Rent Control Act, 1999. If the person concerned has come in occupation subsequent to such date, then of course the Public Premises Act, 1971 will apply.’ (para 59)

7.2 **Suhas H. Pophale**² again charted different course ignoring the binding law, by observing,

‘The Public Premises Act, 1971 will apply only to those who come in such occupation after such date. Thus, there is no occasion to have a dual procedure which is ruled out in para 66 of *Ashoka Mktg.* [*Ashoka Mktg. Ltd. v. Punjab National Bank*, (1990) 4 SCC 406] We must remember that the occupants of these properties were earlier tenants of the erstwhile insurance companies which were the private landlords. They have not chosen to be the tenants of the government companies. Their status as occupants of the public insurance companies has been thrust upon them by the Public Premises Act, 1971.’ (para 60)

7.3 The law in **Ashoka Marketing**³ was literally brushed aside: -

“It is true that Section 15 of the Public Premises Act, 1971 creates a bar of jurisdiction to entertain suits or proceedings in respect of eviction of any person in an unauthorised occupation. However, as far as the relationship between Respondent 1, the other general insurance companies, LIC, nationalised banks and such other government companies or corporations, on the one hand and their occupants/licensees/tenants on the other hand is concerned, such persons who are in occupation prior to the premises belonging to or taken on lease by such entities, will continue to be governed by the State Rent Control Act for all purposes.”

Guise of Clarifying

8. It is evident that the view taken and the interpretation sought to be provided by the two Judge Bench in **Suhas H. Pophale**² is in direct conflict with **Ashoka Marketing**³. Not only that, there was a misdirected attempt on part of the two Judge Bench in **Suhas H. Pophale**² to try and explain, that the view taken by it, was justified in the facts of the case.

8.1 A flimsy distinction was sought to be drawn,

“In *Ashoka Mktg.* [*Ashoka Mktg. Ltd. v. Punjab National Bank*, (1990) 4 SCC 406], this Court was concerned with the premises of two nationalised banks and Life Insurance Corporation. As far as Life Insurance Corporation is concerned, the life insurance business was nationalised under the Life Insurance Corporation Act, 1956. Therefore, as far as the premises of LIC are concerned, they will come under the ambit of the Public Premises Act, 1971 from 16-9-1958 i.e the date from which the Act is brought into force. As far as the nationalised banks are concerned, their nationalisation is governed by the Banking Companies (Acquisition and Transfer of Undertakings)

Act, 1970, and therefore, the application of the Public Premises Act, 1971 to the premises of the nationalised banks will be from the particular date in the year 1970 or thereafter.” (Para 59)

8.2 Not following the law laid down by larger Bench under the cloak of a purported exercise of clarification, cannot be countenanced. Such approach was evident when **Suhas H. Pophale**² observed,

“We have not for a moment taken any position different from the propositions in *Ashoka Mktg. [Ashoka Mktg. Ltd. v. Punjab National Bank, (1990) 4 SCC 406]*. The only issue is with effect from which date. That aspect was not canvassed at all before the Constitution Bench, and that is the only aspect which is being clarified by this judgment. (para 66)

8.3 Claiming to be in agreement with **Ashoka Marketing**², following was said by **Suhas H. Pophale**² with clear departure,

“We are only clarifying that the application of the Public Premises Act, 1971 will be only from 16-9-1958, or from such later date when premises concerned become public premises on the landlord concerned becoming a government company or public corporation. When the law laid down by the different Benches of this Court including by the Constitution Benches on retrospectivity is so clear, and so are the provisions of the Public Premises Act, 1971, there is no occasion for this Court to take any other view. When this judgment is only clarifying and advancing the proposition laid down in **Ashoka Marketing (supra)**. (para 66)

8.4 According to the two-Judge Bench in **Suhas H. Pophale**², the issue about the retrospective application of the PP Act 1971, tenancies existing before 16.09.1958, or before the property in question becoming public premises, was neither canvassed before nor considered by the Bench in **Ashoka Marketing**³, therefore, the said decision would not prevent the Bench of two Judges in any way from clarifying the judgment on the said issue. It took the view, as observed in paragraph 67 that the judgment in **Ashoka Marketing**³ was an authority for what is deduced and not what can be logically reduced therefrom. According to **Suhas H. Pophale**², what was decided was only something which could be logically deduced from **Ashoka Marketing**³, therefore, on that score, the said decision was not a binding authority.

Turned Blind Eye

9. Conspicuously, the two-Judge Bench of this Court in **Suhas H. Pophale**², in what it decided and in the propositions it laid down, overlooked, ignored and disregarded the *ratio decidendi* of the Constitution Bench in **Ashoka Marketing Ltd.**³ as also the very *ratio* laid down by three-Judge Bench in **M/s. Jain Ink**⁷. The mandate of law of precedent was completely disregarded by the two-Judge Bench in **Suhas H. Pophale**². It could be viewed as judicial indiscipline, if not judicial impropriety.

Discipline of Law of Precedent

10. The doctrine of *stare decisis* embodies the foundational principle that precedents must be observed with institutional fidelity, not merely by the High Courts or subordinate courts, but by this Court as well. It enjoins that a Bench of lesser or coequal strength must follow the law declared by a larger Bench, in recognition of the binding authority of such pronouncements. This adherence to precedent is not a matter of mere formality, but of judicial discipline and constitutional propriety. The underlying purpose for respecting and following the decisions of the Bench consisting of greater number of Judges and even of the Bench of co-equal strength, is part of judicial discipline. It ensures certainty, predictability and dependability in the operation and application of law.

10.1 It is immaterial that the decision of the larger Bench is rendered prior in point of time or at subsequent stage. The precedential value is determined by virtue of the hierarchical position or the number of Judges delivering the judgment. Given these well settled principles in the realm of law of precedent, the two-Judge Bench in **Suhas H. Pophale**² could not have taken a view contrary to the decisions of the Benches of larger strength of this Court.

Binding Nature

11. In *Mattulal vs. Radhe Lal*⁹, this Court was beset with the situation similar to one obtained here in terms of abiding by the law of precedent, and observed,

‘The argument that the learned Judges of the High Court exceeded their jurisdiction under Section 39(2) of the Delhi Rent Control Act, when they reversed the finding of bona fide requirement of the appellant, has no substance. Whether on the facts proved the requirement of the landlord is bona fide within the meaning of Section 14(1)(e) is a finding on a mixed question of law and fact. An inference that the requirement of the appellant in the present case was bona fide could not be regarded as conclusive.’ (para 11)

11.1 The Court further observed,

‘Now there can be no doubt that these observations made in *Kamla Soni's case* [S.A. No. 2150 of 1956, dec. on 26th September, 1969] are plainly in contradiction of what was said by this Court earlier in *Sarvate T.B.'s case* [1965 MPLJ 26] . It is obvious that the decision in *Sarvate T.B.'s case* was not brought to the notice of this Court while deciding *Smt Kamla Soni's case*, [S.A. No. 2150 of 1956, dec. on 26th September, 1969] or else this Court would not have landed itself in such patent contradiction. But whatever be the reason, it cannot be gainsaid that it is not possible to reconcile the observations in these two decisions. That being so, we must prefer to follow the decision in *Sarvate T.B.'s case* [1965 MPLJ 26] as against the decision in *Smt Kamla Soni's case* [S.A. No. 2150 of 1956, dec. on 26th September, 1969] as the former is a decision of a larger Bench than the latter. (para 11)

11.2 A similar situation of violating/breaching the doctrine of *stare decisis* was dealt with by this Court in **General Manager, Telecom vs. A. Srinivasa Rao & Ors.**¹⁰, holding that the bench of lesser strength cannot take a view contrary to, or bypass, that has been taken by a larger Bench. The issue was with regard to concept and definition of ‘industry’ within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. A two-Judge Bench in **Sub-Divisional Inspector of Post vs. Theyyam Joseph**¹¹ held that the functions of the Postal Department, since part of the sovereign functions of the State, the Department would not be an ‘industry’. This view was taken and the decision was rendered without reference to the seven-Judge Bench decision in **Bangalore Water Supply and Sewerage Board vs. A. Rajappa**¹². It was noticed that in the later decision in **Bombay Telephone Canteen Employees' Assn. vs. Union of India**¹³, a Bench having strength of two-Judges followed the decision of **Theyyam Joseph (supra)** to hold that the Telephone Nigam was not an ‘industry’. In **Bombay Telephone Canteen Employees' Assn. (supra)**, the Court although had referred to the **Bangalore Water Supply and Sewerage Board (supra)**, the two-Judge Bench proceeded to distinguish **Bangalore Water Supply and Sewerage**

⁹ (1974) 2 SCC 365

¹⁰ (1997) 8 SCC 767

¹¹ (1996) 8 SCC 489

¹² (1978) 2 SCC 213

¹³ (1997) 6 SCC 723

Board (supra) to observe that if the law laid down in **Bangalore Water Supply and Sewerage Board**⁸ is followed, then catastrophic consequences would ensue.

11.3 This Court observed in **General Manager, Telecom (supra)** that the view taken by the two-Judge Bench that the application of law laid down in **Bangalore Water Supply and Sewerage Board**⁸ would cause catastrophic consequences will have no impact on the role of *stare decisis* and the two-Judge Bench was bound to follow the law laid down by the seven-Judge Bench in **Bangalore Water Supply and Sewerage Board**⁸.

11.4 Following pertinent observations were made.

‘It is needless to add that it is not permissible for us, or for that matter any Bench of lesser strength, to take a view contrary to that in *Bangalore Water Supply* or to bypass that decision so long as it holds the field. Moreover, that decision was rendered long back—nearly two decades earlier and we find no reason to think otherwise. Judicial discipline requires us to follow the decision in *Bangalore Water Supply* case. We must, therefore, add that the decisions in *Theyyam Joseph* and *Bombay Telephone Canteen Employees’ Assn.* cannot be treated as laying down the correct law.’ (Para 7)

Conclusions

12. In view of the foregoing discussion, reasons and analysis, the following positions of law emerges,

(a) In view of the law laid down by the Constitution Bench in **Ashoka Marketing**³ and the three-Judge Bench decision in **M/s. Jain Ink**⁷, the view taken in **Suhas H. Pophale**² which is a two-Judge Bench decision, is palpably incorrect and unjustified. **Suhas H. Pophale**² cannot and does not hold the field.

(b) Since, the propositions laid down in **Suhas H. Pophale**² runs contrary to the decisions laid down by the Benches of larger strength in **Ashoka Marketing**³ and **M/s. Jain Ink**⁷, the same is bad in law.

(c) The *ratio decidendi* by the Bench of larger strength is binding on the Bench of the smaller strength, irrespective of the fact whether the judgment by the Bench of the larger strength is *apriori* or *posterior*, in point of time.

(d) A Bench of the smaller strength cannot mark a departure from the decision of the Bench of larger strength, so as to vary the ratio of the Bench of larger strength, in guise of explaining the decision of the larger Bench.

(e) It was not permissible for the two-Judge Bench in **Suhas H. Pophale**² to interpret the statutes and lay down propositions in conflict with what was laid down by the Constitution Bench in **Ashoka Marketing**³ and by a three-Judge Bench in **M/s. Jain Ink**⁷, when the set of material facts in the background of the controversy dealt with, were similar.

(f) In laying down the propositions incongruent to and contrary to the law laid down in **Ashoka Marketing**³, the Bench in **Suhas H. Pophale**² disregarded the principle of *stare decisis* and violated the well settled law of precedent.

Answers

13. As a sequitur, this Court reiterates the propositions of law laid in **Ashoka Marketing**³

(i) Both categories of statutes namely, the PP Act 1971 on one hand, and the Bombay Rent Control Act, 1947, Maharashtra Rent Control Act, 1999, Delhi Rent Control Act, 1958 and similar Rent Control Legislations, on the other hand, are special laws. Therefore, in

order to determine as to which Act will apply in case of conflict, reference has to be made to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein. Keeping in view the object and purpose underlying both the enactments, that is, the PP Act 1971 and the Rent Control Acts, the provisions of the PP Act 1971 shall override the provisions in the Rent Control Legislations.

(ii) The PP Act 1971 and the State Rent Control Acts are special enactments in themselves. Rule *generalia specialibus non derogant* will not apply. Having regard to the purpose, policy and legislative intent of the PP Act 1971, the same would prevail over the State Rent Control Acts in respect of eviction of 'unauthorised occupants' of 'public premises' as defined in Section 2(g) of the Act.

(iii) The provisions of PP Act 1971, to the extent they cover the premises falling within the ambit of Rent Control Act, override the provisions of the Rent Control Act.

(iv) A person in unauthorised occupation of 'Public Premises' under Section 2(e) of the Act cannot invoke the protection of the Rent Control Act.

(v) In cases where the tenanted premises are claimed to be governed by the State Rent Control Act and the same have also become 'Public Premises' within the meaning in Section 2(e) of the PP Act 1971, for their unauthorised occupation, the PP Act 1971 will have the application.

(vi) The statutory machinery envisaged under the PP Act 1971, could be activated for recovery of possession of public premises by any Government or public entity mentioned in the definition.

(vii) The PP Act 1971 will apply to the tenancies which may have been created and in existence either before coming into force of the Act or which may have been created subsequent to coming into the force of the Act.

(viii) Two conditions must be satisfied for the applicability as above. Firstly, the tenanted premises must fall within the purview of definition under Section 2(e) of the PP Act 1971. Secondly, the premises should have been in unauthorised occupation.

(ix) Termination of tenancy of 'Pubic Premises' by issuing notice under Section 106 of the Transfer of Property Act, 1882 is one of the modes which would render the occupation of the tenant unauthorised, post the date specified in such notice. This would hold true in respect of tenancies created before or after coming into force of the PP Act 1971.

(x) Invocation and applicability of the provisions of the PP Act 1971 is not dependent upon the aspect of possession. What is material is the occupation of the premises which has become unauthorised occupation. The occupation is a continuous concept.

(xi) The propositions enunciated in **Suhas H. Pophale**², as noticed in paragraph 3.3.6 of this judgment, do not, in our considered view, state the correct position of law. The observations made therein, with great respect, are not in consonance with the settled legal principles and runs contrary to the principle of *stare decisis* and stand overruled to that extent.

14. The Reference is answered accordingly.